United States Circuit Court, District of Minnesota.

OWENS, ASSIGNEE, *v.* GOTZIAN ET AL.

The judgment of a state court will be regarded by the federal courts sitting within the territorial limits of the state in which the same is rendered as a domestic judgment.

The service of summons by a party to the action is an irregularity that is waived by the other party unless objected to before the entry of judgment, and it cannot therefore be taken advantage of by a third party when the judgment is attacked in a collateral proceeding.

"Party to the action," as used in sect. 47, ch. 66, p. 456, R. S. Minn., *held* to extend only to parties named in the proceedings, and not to those who, though interested, do not appear on the record.

THIS was an action brought to recover damages for the conversion by the defendants to their own use of certain personal property alleged to belong to the bankrupts' estate. During the trial the record of a judgment rendered in a District Court of the state of Minnesota, in an action in which the present defendants were plaintiffs, and the bankrupts were defendants, was introduced in evidence, and proof was made that the defendants purchased the property in question at a sheriff's sale under execution issued upon such judgment. The plaintiff offered to prove that the service of summons in that suit was made by a silent partner of the firm of Gotzian & Seabury, and urged that such service was invalid, and the judgment void, by virtue of the following statute of the state of Minnesota:—

"The summons may be served by the sheriff of the county where the defendant is found, or by any other person not a party to the action:" R. S. Minn., sect. 47, p. 456. The testimony offered was objected to by the defendants.

Davis, O'Brien & Wilson, for plaintiff.

George L. Otis and *Rogers & Rogers*, for defendants.

The opinion of the court was delivered by

NELSON, J.—Two propositions are involved in the objection:—

1. Is the judgment of the state court a foreign or domestic judgment?

2. If a domestic judgment, can the plaintiff attack it in this suit?

In nearly every instance where the judgment of a federal court

sitting within the same territorial limits, has been the subject of consideration in a state court, it has been regarded as a domestic judgment: *Thomson* v. *Lee Co.*, 22 Iowa 206, and cases cited For obvious reasons the judgment of a state court should be regarded as domestic by the federal courts in the same state; both federal and state courts enforce and give effect to the same laws, summon jurors from, and their judgments operate upon and compel seizure and sale of the property of, the same citizens, and they are not, therefore, foreign to each other.

Being a domestic judgment it may be shown to be void upon its face if the court rendering it had no jurisdiction of the defendants' persons, and it is equally true that, except for errors affecting the jurisdiction of the court, its validity cannot be questioned. If jurisdiction of the persons was obtained in this case in the state court, this court must regard it as conclusive of the question determined, and give it full force and effect. The record discloses personal service upon the defendants, yet the plaintiff urges that the service was made by one of the parties to the action and that such service is not permitted, and renders the judgment a nullity as to strangers to the action. This proposition is not without force. If the statute prescribes the mode and manner of service of summons, and authorizes it to be made by any person except a party to the action, the question may well be asked why a judgment entered up without any appearance of the defendants thus served is not beyond the authority of the court rendering it? Why should strangers to the judgment be prevented from establishing, perhaps a prior lien, or a superior encumbrance, on showing the service of summons was by an incompetent person? The answer is, that this error in the service did not affect the jurisdiction of the court, and is only an irregularity. The actual service upon the defendants appears in the record, and no objection being made before judgment is rendered, the defect is cured by the entry. Such is undoubtedly the rule as between parties to the suit, and it is reasonable that strangers to the record should not impeach it in a collateral action. The service shows a defect in obtaining jurisdiction, not a want of jurisdiction, and it is presumed the court when judgment was rendered determined the service attempted sufficient and passed upon that question: 22 Iowa 380; 2 Abb. P. 344. Again, an inspection of the record shows that the person who served the summons, although perhaps a silent partner

of plaintiffs, was not by name a party to the suit. There has been no authoritative construction of this statute, but I think the term "not a party to the action" extends only to parties named in the proceedings, and not to a party in interest whose name does not appear. The objection at least should have been made before judgment was entered.

ABSTRACTS OF RECENT AMERICAN DECISIONS

SUPREME COURT OF THE UNITED STATES.[1]
COURT OF CHANCERY OF DELAWARE.[2]
SUPREME COURT OF PENNSYLVANIA.[3]
SUPREME COURT OF WISCONSIN.[4]

ADMIRALTY.

Maritime Lien—Remedies in rem and in personam.—Wherever a maritime lien arises the libellant or plaintiff may waive the lien in the admiralty, and pursue his remedy by a suit *in personam*, or he may institute an action at law, if the common law is competent to give him a remedy. Such a party may, if he sees fit, proceed *in rem* in the admiralty, and if he elects to enforce the maritime lien which arises in the case, he cannot proceed in any other mode or forum, as the jurisdiction of the admiralty courts to enforce a maritime lien is exclusive and cannot be exercised in any other mode than by a proceeding *in rem: Norton* v. *Switzer*, S. C. U. S., Oct. Term 1876.

AGENT. See *Corporation.*

Ratification—Telegraph Company is Agent of Sender.—Where a person assumes in good faith, but without authority in fact, to act as agent for another, the latter on being fully informed of the act, must disaffirm it within a reasonable time (at least where his silence would prejudice innocent parties), or he will be held to have ratified it: *Saveland* v. *Green*, 40 Wis.

Thus, where plaintiff received from B., a vessel broker in defendant's place of residence, an order to charter at certain rates a vessel belonging to defendant, and did charter the vessel accordingly, and telegraphed the fact to B., who communicated it to defendant, and the latter did not disaffirm the contract either to B. or to plaintiff, the jury might find that he had ratified it: *Id.*

The party who sends an order by telegraph makes the telegraph company his agent for its transmission and delivery, and is bound by the

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 3 or 4 Otto.

[2] From Hon. D. M. Bates, Reporter; to appear in 2 Delaware Chan. Reports.

[3] From P. F. Smith, Esq., Reporter; to appear in 80 Penna. St. Reports.

[4] From Hon. O. M. Conover, Reporter; to appear in 40 Wisconsin Reports.